

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of

Assessment and Collection
of Regulatory Fees for
Fiscal Year 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

MD Docket No. 95-3

REPLY COMMENTS
OF
VANGUARD CELLULAR SYSTEMS, INC.

VANGUARD CELLULAR SYSTEMS, INC. ("Vanguard" or "Company"), acting through counsel and in accordance with the Commission's Notice of Proposed Rulemaking, FCC 95-14, released January 12, 1995 ("Notice"), hereby files its Reply Comments in this proceeding.

I. INTRODUCTION

1. Vanguard is one of the largest independent, non-wireline cellular companies, serving more than 275,000 subscribers in 26 different Metropolitan Statistical Areas ("MSA") and Rural Service Areas ("RSA") east of the Mississippi. Therefore, Vanguard has a clear stake in the Commission's proposal to more than double the annual regulatory fee imposed on cellular licensees.

2. Vanguard is prepared to fulfill its obligation to make a reasonable contribution to cover the costs of its regulation. But the Commission's proposal assigns a disproportionate share of the increased fees to cellular carriers and represents, in one year's time, a 117% increase per unit over the previous charge.

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In addition, the Commission is proposing to change the unit of measurement from a per subscriber basis to a per call sign/telephone number basis, an accounting format which may impose additional costs on cellular carriers. Vanguard estimates that this double barrel change will increase its regulatory fee payment for 1995 by well over 150%. See, Comments of the NYNEX Companies at p. 6. (projecting 286% increase) ("NYNEX Comments").

**II. Regulatory Fees For Cellular Licensees
Should Be Based On The Number Of Subscribers**

3. Vanguard recognizes that Congress has established the amount of regulatory fees to be collected by the Commission, and that the Commission therefore does not have discretion to modify that amount. However, the Commission does have discretion over the manner in which the fees are allocated among and collected from the different telecommunication services.^{1/}

4. In the Notice, the Commission proposed, *inter alia*, to collect from common carriers \$57 million dollars of the total \$116.4 million set by Congress as the requirement for Fiscal Year 1995. This represents a 218% increase over the 1994 allocation of fee collections from the Common Carrier Bureau. Alltel Comments at p. 6. As further noted by Alltel^{2/}, the Commission then apparently applies this increase across the board to each common carrier service, without making any allocation to more closely approximate the level of regulation of a particular service. *Id.*

^{1/} See, 47 U.S.C. § 159(b)(3) (1994).

^{2/} Joint Comments of Alltel Mobile Communications and Alltel Services Corporation at ¶ 6 ("Alltel Comments").

5. As part of this proposal, the Commission would increase the fees paid by cellular licensees from 6 cents per subscriber to 13 cents per call sign or telephone number ("unit") assigned to the licensee's customers - an increase of 117% - and the increase is actually much more when the change in the "accounting" unit is factored in. The Commission's proposal to change the method by which cellular licensees calculate the amount of their regulatory fees was not supported by any discussion of why a subscriber-based fee was not appropriate or why a unit-based fee will more accurately "reflect the benefit that the licensee receives from its use of frequencies of communications."^{3/}

6. Not only would the proposed unit-based regulatory fee structure dramatically increase cellular licensees' cost, but also, as noted in Alltel's Comments, it would result in cellular licensees having to pay a fee based upon a unit that may not actually be in service and which may not be generating any revenue.^{4/} It also could result in Vanguard paying multiple fees for the same customer. Such an arrangement would be inequitable and unnecessarily burdensome upon cellular licensees, especially considering the Commission's proposal to exempt certain other services from regulatory fees for Fiscal Year 1995.^{5/}

^{3/} Notice at ¶ 44. See also, Comments of Frontier Cellular Holding Inc. at p. 3 (hereinafter "Frontier Comments").

^{4/} Alltel Comments at ¶ 10.

^{5/} The Commission specifically did not propose regulatory fees for PCS, CMRS, LEO or DBS. Notice at ¶ 13, n. 9. It is unfair that the Commission would require cellular licensees to pay regulatory fees, while "other" CMRS providers are exempt. See,

III. Regulatory Fees Should Be More Equitably Distributed Among All Licensees

7. In the Notice, the Commission also proposed increases to regulatory fees for Inter-Exchange Carriers ("IXC"), Local Exchange Carriers ("LEC") and Competitive Access Providers ("CAP") for Fiscal Year 1995.^{5/} But it also added new services to the list of common carrier licensees who must pay regulatory fees. It is inconsistent for the Commission to add services yet at the same time impose such a greatly increased burden upon cellular licensees.^{2/}

8. Furthermore, the Commission has proposed to calculate carrier fees (i.e., those imposed upon IXCs, LECs and CAPs) based on the number of users of the service, not on the number of units licensed to the licensee. The Commission's prior practice of basing cellular licensees' regulatory fees on the number of subscribers connected to the service is consistent with the directive established by Congress that the amount of regulatory fees for cellular licensees be "per 1,000 subscribers."^{3/} Thus, the Commission's current proposal is arguably inconsistent with Congressional intent and sets up an "accounting" dichotomy amidst

GTE's Comments at p. 4.

^{5/} Notice at ¶¶ 54, 56.

^{2/} It is also inconsistent for the Commission to exclude cellular resellers. See, Frontier Comments at pp. 1-2.

^{3/} 47 U.S.C. § 159(g) (1994). See also, Frontier Comments at p. 3, n. 6. Furthermore, in no instance should any cellular licensee be required to pay regulatory fees in more than one category. See, GTE's Comments at p. 6.

common carrier payees that is unwarranted and unsupported. Moreover, it effectively penalizes carriers that seek to offer innovative services to the public. See, Frontier Comments at p. 4.

**IV. The Commission Is Asking Cellular Carriers
To Bear A Disproportionate Share
Of The Regulatory Burden**

9. It is ironic that the Commission is asking cellular carriers, a rather mature industry whose regulatory burden on the Commission has arguably stabilized, to sustain a 117% increase in the unit payments owed. At the same time, the Commission seeks little or no compensation from industries that, because of their current status, will impose greater regulatory burdens on the Commission over the course of the next year. (e.g., PCS). See, NYNEX Comments at p. 5. Could it be that the Commission has identified the rapidly growing cellular industry as a regulatory fee bonanza to be targeted for such an increase? If that is the case, it is unfair and unwarranted, especially when coupled with the change in the "accounting" unit proposed by the Commission. With 25,000,000 subscribers, the cellular industry alone would contribute well over \$3 million to cover the Commission's regulatory costs. The change in accounting method could make it even more. As pointed out by the NYNEX companies, this would place "an unfair and unequitable burden on cellular licensees. NYNEX Comments, at pp. 5-6.^{2/}

^{2/} Indeed, as pointed out by at least two commenters, it is not clear that the Commission used an accurate estimate for the number in the Public Mobile/Cellular Radio category. See, e.g.,

**V. The Commission Should Refrain
From Requiring Cellular Licensees
to Disclose Proprietary Information**

10. The Commission's proposal to assess a regulatory fee upon cellular licensees based upon the number of call signs or telephone numbers assigned to the licensee's customers would force cellular licensees to disclose commercially sensitive subscriber data.^{10/} Therefore, Vanguard opposes it.

11. In any case, Vanguard supports SBC's proposal to have the Commission incorporate into its final decision the clarification previously announced by the Commission last August, which provided, *inter alia*:

[P]ublic mobile providers ... may distribute the total number of subscribers to these call signs in one of the following ways: (1) allocate one subscriber to every call sign, except one, and allocate the remainder of subscribers to the remaining call sign, or (2) determine the average number of subscribers per call sign and use this number of subscribers for each call [sic].^{11/}

12. Formally adopting the clarification would still hold licensees accountable for documenting their fee payment, while allowing licensees to continue to preserve the confidential nature of their subscribership data.

Comments of Bell Atlantic at pp. 3-4.

^{10/} See, e.g., Comments of the Cellular Telecommunications Industry Association ("CTIA") at p. 3.

^{11/} *The Most Commonly Asked Questions and Responses About FCC Regulatory Fees, Clarification*, Public Notice, released August 16, 1994 (the "Clarification"). See also, Comments of Southwestern Bell Corporation at pp. 7-8 (hereinafter "SBC Comments").

VI. CONCLUSION

13. The Commission's proposal to require cellular licensees to pay a regulatory fee based on the number of call signs or telephone numbers assigned to the licensee places an inequitable and unjustifiable burden upon cellular licensees. Moreover, so is the size of the increase in the per unit fee. The Commission must adjust its proposal to meet these objections.

Respectfully submitted,

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Dated: February 28, 1995

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CERTIFICATE OF SERVICE

I, Lisa Y. Taylor, a secretary in the law firm of Besozzi, Gavin & Craven, hereby certify that on this 28th day of February 1994, I have caused a copy of the foregoing **"REPLY COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC."** to be served via hand-delivery upon the following individuals:

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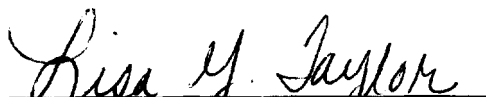
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